

REMARKS

Claims 1-46 are now pending in the application. New Claims 47-50 are presented herein for consideration. Claims 4 and 27 have been cancelled. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

Applicant would like to thank the Examiner for courtesy extended during the telephone interview on November 22, 2005. During the interview, Applicant discussed the differences in operation between the prior art of record and the claimed invention. In particular, Applicant pointed out that the Krikorian reference describes an end user computer that can only alter the continuous play program of the same end user computer. In contrast, the claimed computer, which is remote from the claimed web server and the playback control device, can alter the continuous play program of the playback control device.

This distinction is very important. In particular, this claimed feature allows the remote management of playback control devices. Therefore, a franchise owner can remotely manage the background music in stores (where the playback control devices are located) without needing to travel to the stores or have on-site personnel who can manage the background music. By grouping the playback devices, a common continuous play program can also be deployed remotely.

REJECTION UNDER 35 U.S.C. § 103

Claims 1, 2, 4, 6-12, 14, 16, 17, 19-25, 29-35, 37, 39, 40 and 42-46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Krikorian (U.S. Pat. No. 5,726,909) in view of DeMoney (U.S. Pat. No. 6,064,379). This rejection is respectfully traversed.

With respect to Claim 1, neither Krikorian nor DeMoney show, teach or suggest a computer that is independent from the playback control device and that is connected to the distributed communications system, wherein the computer accesses the web server via the distributed communications system to alter the continuous play program for the playback control device.

DeMoney is being cited for the playback control device and **does not show, teach or suggest the claimed computer.**

Krikorian also does not show, teach or suggest the claimed computer. In Krikorian, the end user computer relied upon by the Examiner is **ONLY** capable of altering the continuous playback program for the **same end user computer**. In contrast, Claim 1 requires the claimed computer, **which is independent from the playback control device and remote from the web server**, to alter the continuous play program for **the playback control device**. Therefore, this claimed feature is not taught or suggested by either Krikorian or DeMoney.

It is improper to take teachings in the prior art out of context and give them meanings that they would not have to those skilled in the art. *In re Wright*, 9 USPQ.2d 1649 (Fed. Cir 1989). Here, the Examiner relies upon the end user computer for the teachings relating to “a computer that is independent from the playback control device

and that is connected to the distributed communications system”. The Examiner also relies upon the central computer for the entire portion of the claim including the following:

a web server that is located remotely from said computer and that is connected to said distributed communications system and to a master library of said digital media files, **wherein said computer accesses said web server via said distributed communications system to alter said continuous play program for said playback control device**

The underlined portion cannot be taught or suggested by the central computer in Krikorian. The central computer is allegedly the same as the claimed web server. Furthermore, this **underlined portion cannot be taught or suggested by the end user computer** since it can only alter its OWN continuous play program – it cannot alter the continuous play program of the playback control device or other end user computers.

A reference must be considered for all that it teaches including disclosures that point towards the invention and disclosures that teach away from the invention. ***In re Dow***, 5 USPQ.2d 1529 (Fed. Cir. 1988). Here, Krikorian teaches that the end user computer can alter its own continuous play program and does not teach or suggest that the end user computer can alter the continuous play program of another end user computer or another playback control device.

It is impermissible to pick and choose from a reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what the reference fairly teaches to one skilled in the art. ***Bausch & Lomb, Inc. v. Barnes-Hind, Inc.***, 230 USPQ 416 (Fed. Circ. 1986). Here, the Examiner has failed to

appreciate that the Krikorian reference only teaches using an end user computer to alter the continuous play program using the SAME end user computer.

It is a longstanding rule that to establish a prima facie case of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. In re Royka, 180 USPQ 143 (CCPA 1974), see MPEP §2143.03. By failing to properly support a finding that either of the Krikorian or DeMoney references include all of the teachings of Claim 1, the Examiner has failed to establish a prima facie case of obviousness.

Applicants believe that Claim 1 is allowable for at least the foregoing reasons. Claims 2-23 depend directly or indirectly from Claim 1 and are allowable for at least similar reasons.

Claim 24 is allowable for at least similar reasons as Claim 1. Claims 25-46 depend directly or indirectly from Claim 24 and are allowable for at least similar reasons.

In addition to the foregoing, none of the prior art references show, teach or suggest altering the continuous play program for multiple playback control devices using the computer as recited in Claim 14.

In rejecting Claim 14, the Examiner refers to Column 5, lines 10-50. Applicant cannot find any teaching or suggesting in the referenced section that supports the Examiner's position. This section relates to an end user computer that alters its **OWN** continuous play program – **NOT** a computer that is independent from the playback control device and remote from the web server that alters the continuous play program

of the playback control device. Furthermore, this section also does **NOT** show, teach or suggest altering the continuous play programs of multiple playback control devices.

It is a longstanding rule that to establish a prima facie case of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 USPQ 143 (CCPA 1974), see MPEP §2143.03. The Examiner failed to properly support a finding that either of the Krikorian or DeMoney references allow the computer, which is independent from the playback control device and remote from the web server, to alter the continuous play program of multiple playback control devices. Therefore, Applicants believe that Claim 14 is allowable for at least the foregoing reasons. Claims 47 and 49 are allowable for at least similar reasons.

In addition to the foregoing, none of the prior art references show, teach or suggest grouping the playback control devices and altering the continuous play program for multiple playback control devices using the computer as recited in Claims 15.

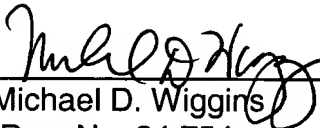
In rejecting Claim 15, the Examiner refers to Krikorian, DeMoney and Leeke. Krikorian and Leeke relate to an end user computer that alters its **OWN** continuous play program – **NOT** a computer that is independent from the playback control device that alters the continuous play program of the playback control device. Furthermore, this section also does **NOT** show, teach or suggest using to computer to group and/or alter the continuous play programs of multiple playback control devices. Therefore, Applicants believe that Claims 15 is allowable for at least the foregoing reasons. Claims 48 and 50 are allowable for at least similar reasons.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: January 5, 2005

By: 
Michael D. Wiggins
Reg. No. 34,754

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

MDW/dms